

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MASSACHUSETTS**

In re:

The Education Resources Institute, Inc.,

Debtor.

Official Committee of Unsecured Creditors of the Education
Resources Institute, Inc., on behalf of itself and, derivatively,
on behalf of the Debtor and bankruptcy estate,

Plaintiff,

v.

WILMINGTON TRUST COMPANY,

as Owner-Trustee of:

The National Collegiate Master Student Loan Trust I
(a/k/a The National Collegiate Student Loan Trust 2001
A/R 1, 2, 3)

The National Collegiate Trust 2001-CP1

The National Collegiate Trust 2002-CP1

The National Collegiate Student Loan Trust 2003-1

The National Collegiate Student Loan Trust 2004-1

The National Collegiate Student Loan Trust 2004-2

The National Collegiate Student Loan Trust 2005-1

The National Collegiate Student Loan Trust 2005-2

The National Collegiate Student Loan Trust 2005-3

The National Collegiate Student Loan Trust 2006-1

The National Collegiate Student Loan Trust 2006-2

The National Collegiate Student Loan Trust 2006-3

The National Collegiate Student Loan Trust 2006-4

The National Collegiate Student Loan Trust 2007-1

The National Collegiate Student Loan Trust 2007-2

The National Collegiate Student Loan Trust 2007-3

The National Collegiate Student Loan Trust 2007-4;

U.S. BANK NATIONAL ASSOCIATION

as Indenture Trustee and custodian; and

FIRST MARBLEHEAD DATA SERVICES, INC.

as administrator for Trusts,

Defendants.

Case No. 08-12540(HJB)
Chapter 11

Adv. Proc. No. 09-01040

**AFFIDAVIT OF DENNIS L. JENKINS IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS ADVERSARY COMPLAINT**

I, Dennis L. Jenkins, under the penalties of perjury, hereby state the following to be true on the basis of personal knowledge:

- 1 I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP, which represents defendant First Marblehead Data Services, Inc. in the above-captioned proceeding. I am admitted to practice in the U.S. District Court for the District of Massachusetts.
- 2 I submit this affidavit in support of Defendants' Motion to Dismiss Adversary Complaint and to transmit to the Court the documents appended hereto.
- 3 Attached as Exhibit 1 to the affidavit is a true and correct copy of the Adversary Complaint of the Official Committee of Unsecured Creditors of The Education Resources Institute, Inc., dated January 30, 2009, filed in Adv. Pro. No. 09-01040.
- 4 Attached as Exhibit 2 to the affidavit is a true and correct copy of the June 23, 2008 Order Pursuant to Sections 105, 362, and 363 of the Bankruptcy Code Authorizing and Directing Debtor to Honor Certain of its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established for the Benefit of the Trusts [Docket No. 361].
- 5 Attached as Exhibit 3 to the affidavit is a true and correct copy of the October 24, 2008 Stipulation and Agreed Order Between Debtor and Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary [sic] Against Trusts and (C) Approval by Committee in Connection with any Settlement of Trusts' Asserted Collateral and Claims [Docket No. 576 Ex. A].
- 6 Attached as Exhibit 4 to the affidavit is a true and correct copy of the June 5, 2008 Motion of Debtor for Order (A) Pursuant to Section 365 of the Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with The First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy [sic] Authorizing the Debtor to Enter into a Transition Services Agreement [Docket No. 238] (omitting exhibits).
- 7 Attached as Exhibit 5 to the affidavit is a true and correct copy of the June 23, 2008 Order Granting Motion of Debtor for Order (A) Pursuant to Section 365 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 6006 and 9014 Authorizing the Debtor to Reject Certain Contracts with The First Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code

Authorizing the Debtor to Enter into a Transition Services Agreement [Docket No. 364].

- 8 Attached as Exhibit 6 to the affidavit is a true and correct copy of the June 5, 2008 Motion for Order Pursuant to Sections 105, 362 and 363 of the Bankruptcy Code Authorizing Debtor to Honor Certain of Its Guaranty Obligations and Purchase Defaulted Loans Using Cash in Certain Pledged Accounts Established for the Benefit of the Trusts [Docket No. 239].
- 9 Attached as Exhibit 7 to the affidavit is a true and correct copy of the August 4, 2008 Assented to Emergency Motion of Official Committee of Unsecured Creditors to Extend Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 440].
- 10 Attached as Exhibit 8 to the affidavit is a true and correct copy of the August 25, 2008 Assented to Emergency Motion of Official Committee of Unsecured Creditors for Second Extension of Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 457].
- 11 Attached as Exhibit 9 to the affidavit is a true and correct copy of the September 26, 2008 Assented to Emergency Motion of Official Committee of Unsecured Creditors for Third Extension of Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 489].
- 12 Attached as Exhibit 10 to the affidavit is a true and correct copy of the October 24, 2008 Assented to Emergency Motion of Official Committee of Unsecured Creditors for Fourth Extension of Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 572].
- 13 Attached as Exhibit 11 to the affidavit is a true and correct copy of the November 26, 2008 Assented to Emergency Motion of Official Committee of Unsecured Creditors for Fifth Extension of Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 642].
- 14 Attached as Exhibit 12 to the affidavit is a true and correct copy of the December 29, 2008 Assented to Emergency Motion of Official Committee of

Unsecured Creditors for Sixth Extension of Deadline for Objecting to or Otherwise Contesting Validity, Perfection, Priority or Enforceability of Certain Security Interests of Trusts (Assented to as to Relief Requested by First Marblehead Corporation, Trusts and Debtor) [Docket No. 725].

- 15 Attached as Exhibit 13 to the affidavit are true and correct copies of the August 4, 2008, August 25, 2008, September 26, 2008, October 24, 2008, November 26, 2008, and December 29, 2008 orders granting the Assented to Emergency Motions of Official Committee of Unsecured Creditors attached hereto as Exhibits 9-14 [Docket Nos. 443, 459, 491, 574, 644, and 728].
- 16 Attached as Exhibit 14 to the affidavit is a true and correct copy of the October 24, 2008 Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary [sic] Against Trusts and (C) Approval by Committee in Connection With any Settlement of Trusts' Asserted Collateral and Claims [Docket No. 576] (omitting exhibits).
- 17 Attached as Exhibit 15 to the affidavit is a true and correct copy of the October 29, 2008 Limited Objection to Debtor's Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary Against Trusts: and (C), Approval by Committee in Connection With Any Settlement of Trusts' Asserted Collateral and Claims [Docket No. 583].
- 18 Attached as Exhibit 16 to the affidavit is a true and correct copy of the October 29, 2008 Objection of U.S. Bank National Association, as Indenture Trustee to Relief Requested by Debtor's Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary Against Trusts and (C) Approval by Committee in Connection With Any Settlement of Trusts' Asserted Collateral and Claims [Docket No. 584].
- 19 Attached as Exhibit 17 to the affidavit is a true and correct copy of transcript excerpts from the Transcript of Hearing on: (#576) Debtor's Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary Against Trusts and (C) Approval by Committee in Connection With

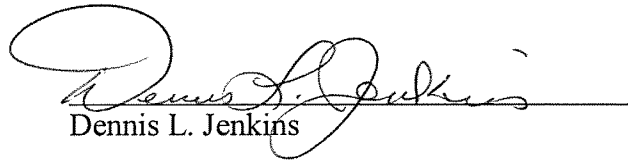
any Settlement of Trusts' Asserted Collateral and Claims; (#583) Limited Objection of First Marblehead Corporation; (#584) Objection of U.S. Bank Before the Honorable Henry J. Boroff, J. U.S.B.C, Oct. 30, 2008 [Docket No. 603].

- 20 Attached as Exhibit 18 to the affidavit is a true and correct copy of the November 20, 2008 Order Granting the Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary Against Trusts and (C) Approval by Committee in Connection With any Settlement of Trusts' Asserted Collateral and Claims [Docket No. 626].
- 21 Attached as Exhibit 19 to the affidavit is a true and correct copy of The National Collegiate Student Loan Trust 2007-3 Trust Agreement, dated September 20, 2007, among Wilmington Trust, as Owner Trustee and The National Collegiate Funding LLC and The Education Resources Institute, Inc., as Owners (omitting schedules or exhibits).¹
- 22 Attached as Exhibit 20 to the affidavit is a true and correct copy of the Administration Agreement, dated September 20, 2007, among The National Collegiate Student Loan Trust 2007-3, as Issuer, Wilmington Trust Company, as Owner Trustee, U.S. Bank National Association, as Indenture Trustee, The National Collegiate Funding LLC, as Depositor and First Marblehead Data Services, Inc., as Administrator.²
- 23 Attached as Exhibit 21 to the affidavit is a true and correct copy of transcript excerpts from the Transcript of Continued Hearing on: (#576) Debtor's Motion for Order Authorizing Debtor to Enter into Stipulation With Official Committee of Unsecured Creditors Regarding (A) Forbearance by Committee in Filing Objections to Perfection and Enforceability of Certain Security Interests Asserted by Trusts; (B) Derivative Standing of Committee to Commence Adversary Against Trusts: and (C), Approval by Committee in Connection With Any Settlement of Trusts' Asserted Collateral and Claims; (#583) Limited Objection of First Marblehead Corporation; (#584) Objection of U.S. Bank Before the Honorable Henry J. Boroff, J. U.S.B.C., Nov. 18, 2008 [Docket No. 762]

¹ Exhibit 19 is attached hereto as an exemplar of the Trust Agreement for each Trust. The remaining Trust Agreements have been, or will be, made available to the Committee and/or the Court upon request.

² Exhibit 20 is attached hereto as an exemplar of the Administration Agreement for each Trust. The remaining Administration Agreements have been, or will be, made available to the Committee and/or the Court upon request.

Signed under the penalties of perjury this 16th day of March 2009.



Dennis L. Jenkins